

- a. 1 - 1000 gallon metal tank containing diesel oil;
- b. 2 - 250 gallon metal tanks containing hydraulic oil;
- c. 1 - 500 gallon metal tank containing diesel oil;
- d. 1 - 250 gallon metal tank containing unknown waste oil;
- e. 1 - 500 gallon metal cube tote tank containing waste oil;
- f. 100 - 55 gallon drums containing used oil;
- g. 6 - 55 gallon drums containing waste cutting oil; and
- h. 3 - 55 gallon drums containing used motor oil.

At that time the R & F facility had storage capacity for at least 5,995 gallons of oil.

45. On or about July 21, 1999, none of the tanks or drums identified in paragraph 44 had any labels on them indicating their contents or the words "Used Oil".

46. On or about July 21, 1999, the surface impoundments identified in paragraph 22 contained oil from the various scrap piles located at the R & F facility.

47. Respondent periodically pumped the oil from the two surface impoundments into 55-gallon drums.

48. On or about July 21, 1999, the soils in the northeast and northwest corners of the R & F facility were stained with oil.

49. On or about July 21, 1999, R & F stored drums of used oil throughout the R & F facility. Approximately 90 of the drums identified in paragraph 44(f) above were located in the northeast section of the R & F facility. The remaining 10 drums identified in paragraph 44(f) were located near the surface impoundments in the central portion of the R & F facility. These drums were crushed, open and tilted in a manner which caused their contents to drain directly onto the ground.

50. On or about July 21, 1999, oil was draining from an auto-transmission parts pile to an opening in the manhole cover located in the central area of the R & F facility.

51. On or about July 22, 1999, R & F had shipped off-site approximately 2,310 gallons of waste water and oil from approximately 100 drums located at the R & F facility.

52. On or about July 27, 1999, R & F shipped off-site approximately 8,030 gallons of waste water and oil pumped from drums located at the R & F facility.

53. On or about August 2, 1999 U.S. EPA collected five solid and seven liquid samples from the R & F facility.

54. U.S. EPA's samples collected on August 2, 1999 were taken from the following locations at the R & F facility:

Sample Number	Sample location
RF-1	collected from the oil collection pan
RF-2	collected from a puddle on the northwestern side of the R & F facility
RF-3	collected from the northern side of the R & F facility
RF-4	collected from puddles down gradient of the chip pile
RF-5	collected from puddles east of the chip pile
RF-6	collected from soil down gradient of the chip pile
RF-7	composite sample of drum contents
RF-8	soil sample collected near the southern gate

RF-9	soil sample outside of the southern gate
RF-10	soil sample collected in parts washing area
RF-11	samples collected from puddles near maintenance area
RF-12	samples collected from puddles near maintenance area.

55. U.S. EPA detected oil and grease (O&G) in each of the samples it collected on August 2, 1999 and in the following concentrations:

Sample number	O&G concentration (mg/kg)
RF1	960,000
RF2	99,000
RF3	46,000
RF4	910,000
RF5	20,000
RF6	80,000
RF7	640,000
RF8	19,000
RF9	19,000
RF10	54,000
RF11	290,000
RF12	360,000

56. According to MAC § 299.9212(4) (40 C.F.R. § 261.24), a solid waste exhibits the characteristic for toxicity and is considered a hazardous waste if it contains certain contaminants above specified concentrations. Lead, cadmium,

chromium and mercury are identified in MAC § 299.9212 and MAC § 299.9217, Table 201(a) (40 C.F.R. § 261.24) with the following concentrations as the lower limit:

chemical contaminant	concentration limit (mg/L)
lead	5.0
cadmium	1.0
chromium	5.0
mercury	0.2

57. U.S. EPA detected lead, cadmium, chromium and mercury above the toxicity characteristic concentration limit specified in MAC § 299.9212 and MAC § 299.9217, Table 201(a) (40 C.F.R. § 261.24) and paragraph 56 above in the following samples it collected on August 2, 1999:

sample location	chemical	regulatory limit (mg/L)	concentration detected (mg/L)
RF-1	lead	5.0	120
	cadmium	1.0	1.5
RF-2	lead	5.0	51.0
	mercury	0.20	0.27
RF-4	lead	5.0	53
	mercury	0.2	0.60
	cadmium	1.0	1.8
RF-7	lead	5.0	52
RF-12	lead	5.0	9.4

58. On or about October 4, 1999, R & F had approximately 1000 gallons of waste water and oil shipped off-site.

59. On or about February 23, 2000, R & F shipped off-site approximately 3200 gallons of waste water and oil pumped from the ground and shipped off-site.

60. On or about April 17, 2000, R & F had approximately 800 gallons of waste water and oil shipped off-site.

61. From at least 1976 to March 4, 2001 R & F did not have a Spill Prevention, Control and Countermeasures Plan (SPCC Plan).

III. VIOLATIONS

A. COUNT I - CLEAN AIR ACT

FAILURE TO OBTAIN AND RETAIN VERIFICATION STATEMENTS FOR PROPER EVACUATION OF OZONE DEPLETING REFRIGERANTS.

62. Paragraphs 1 - 8 and 17 - 41 are incorporated herein as if set forth in their entirety.

63. R & F is a "person," as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).

64. R & F is a person who disposed of or took the final step in the disposal process ("disposal") of small appliances as part of its business operations at the R & F facility. R & F is, therefore, subject to the regulations at 40 C.F.R. Part 82, Subpart F.

65. R & F disposed of refrigeration and air conditioning units without either recovering refrigerant from the units in accordance with 40 C.F.R. § 82.156(g) or (h); or verifying that the refrigerant had been evacuated from the units previously, in accordance with the specific requirements of 40 C.F.R. § 82.156(f) (2).

66. The refrigeration and air conditioning units or parts thereof that R & F disposed were "small appliances", as that term is defined in 40 C.F.R. § 82.152.

67. R & F's disposal of seven small appliances as set forth in this Count I constitutes at least seven separate violations of 40 C.F.R. § 82.156(f) and section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

B. COUNT II - CLEAN AIR ACT

***FAILURE TO RETAIN RECORDS
RELATIVE TO THE PROPER EVACUATION OF
OZONE DEPLETING REFRIGERANTS.***

68. Paragraphs 1 - 8 and 17 - 41 are incorporated herein as if set forth in their entirety.

69. R & F is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

70. R & F is a person who disposed of or took the final step in the disposal process ("disposed") of small appliances as part of its business operations at the R & F facility. R & F is, therefore, subject to the regulations at 40 C.F.R. Part 82, Subpart F.

71. R & F disposed of refrigeration and air conditioning units or parts thereof without either recovering refrigerant from the units in accordance with 40 C.F.R. § 82.156(g) or (h); or verifying that the refrigerant had been evacuated from the units previously, in accordance with the specific requirements of 40 C.F.R. § 82.156(f)(2).

72. The refrigeration and air conditioning units or parts thereof that R & F disposed were "small appliances", as that term is defined in 40 C.F.R. § 82.152.

73. R & F did not maintain or retain records of its disposal or verification statements as required by 40 C.F.R. § 82.166(i) and (m) and section

113(a) (3) of the CAA, 42 U.S.C. § 7413(a) (3). R & F's failure to maintain or retain such records as set forth in this Count II constitutes at least seven separate violations of 40 C.F.R. § 82.166(i) and (m) and section 113(a) (3) of the CAA, 42 U.S.C. § 7413(a) (3).

C. COUNT III - CLEAN WATER ACT

FAILURE TO HAVE AN SPOC PLAN

74. Paragraphs 9 - 36 and 42 - 61 are incorporated herein as if set forth in their entirety.

75. R & F is a "person" within the meaning of Sections 311(a) (7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a) (7) and 1362(5), and 40 C.F.R. § 112.2.

76. R & F's facility is an "onshore facility" within the meaning of Section 311(a) (10) of the CWA, 42 U.S.C. 1321(a) (10), and 40 C.F.R. § 112.2.

77. R & F is an "owner or operator" within the meaning of Section 311(a) (6) of the CWA, 33 U.S.C. § 1321(a) (6), and 40 C.F.R. § 112.2.

78. Baby Creek, the Detroit and Rouge Rivers are navigable waters of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

79. R & F's facility is a facility which, due to its location, could reasonably be expected to discharge oil to Baby Creek, the Detroit or Rouge Rivers.

80. On or about July 21, 1999, R & F's facility had above ground containers with a storage capacity of more than 660 gallons of oil in one

container and a total capacity of more than 1,320 gallons of oil in all above ground containers at the facility.

81. R & F gathered, stored, or consumed oil or oil products at the facility.

82. R & F's facility is a non-transportation-related facility under the definition incorporated by reference at 40 C.F.R. § 112.2 and 40 C.F.R. Part 112, Appendix A.

83. The regulation at 40 C.F.R. § 112.3(b) requires an owner or operator of an onshore facility that became operational after the effective date to prepare an SPCC plan no later than six months after the date the facility started operations if the facility has violated or could reasonably be expected to violate 40 C.F.R. Parts 110 and 112.

84. From at least July 1999 to December 2001 R & F violated 40 C.F.R. § 112.3(b) and 311 of the CWA by failing to prepare and have an SPCC plan for its facility. R & F failed to prepare an SPCC plan for its facility in violation of the regulation at 40 C.F.R. 112.3(b).

D. COUNT IV RCRA

ILLEGAL STORAGE OF USED OIL

85. Paragraphs 12 - 36 and 42 - 61 are incorporated herein as if set forth in their entirety.

86. MAC §§ 299.9810(4), (40 C.F.R. § 279.12(a) and 279.22(a)) prohibits a used oil generator from storing used oil in units other than tanks or containers.

87. MAC § 299.9109(w) (40 C.F.R. § 279.1) defines a used oil generator as any person whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

88. MAC § 299.9106(i) (Section 1004(15), of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10) defines "person" to include corporations.

89. MAC § 299.9109(o) (40 C.F.R. § 279.1) defines used oil to include any oil that has been refined, used and as a result of such use contaminated by physical or chemical impurities.

90. MAC § 299.9102(j) (40 C.F.R. § 260.10) defines container to mean any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

91. MAC § 299.9108(a) (40 C.F.R. § 260.10) defines tank to mean a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials such as wood, concrete, steel or plastic which provide structural support.

92. R & F is a corporation and thus a "person" under MAC § 299.9106(i) (Section 1004(15), of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10).

93. The liquids identified in paragraphs 26, 27, 36, 44(f), 46-48, 50-55, 57 - 60 and contained in the surface impoundments, scrap piles and on the ground at the R & F facility consisted of oil from transmission parts, aluminum chip paper and machine turnings. These liquids are used oil as that term is defined in MAC § 299.9109(o) (40 C.F.R. § 279.1).

94. R & F's actions of segregating scrap wastes and collecting used oil from these wastes on the ground, in piles, in the surface impoundments and in containers such as drums, tanks and the drip pad make it a "used oil generator" as defined by MAC § 299.9109(w) (40 C.F.R. § 279.1).

95. The surface impoundments as identified in paragraphs 22, 26, 27 and 46, the scrap piles as identified in paragraphs 22, 26, 36 and 50 and the ground as identified in paragraphs 36, 46, 48, 50, 54, 55, 57 and 59 are not tanks or containers as defined in MAC §§ 299.9108(a) and 9102(j).

96. R & F's placement of used oil in units other than tanks or containers as alleged in this Count violated MAC § 299.9810, (40 C.F.R. 279.12(a) and 279.22(a)) from at least July 21, 1999 and constitutes at least one day of violation of MAC § 299.9810.

E. COUNT V RCRA

TEN DETERIORATING CONTAINERS OF USED OIL

97. Paragraphs 12 - 36 and 42 - 61 are incorporated herein as if set forth in their entirety.

98. MAC §§ 299.9810(3), (40 C.F.R. § 279.22(b)) requires a used oil generator to store used oil in tanks and containers that are in good condition (no severe rusting, apparent structural defects or deterioration) and not leaking.

99. MAC § 299.9109(w) (40 C.F.R. § 279.1) defines a used oil generator as any person whose act or process produces used oil or whose act first causes used oil to become subject to regulation.